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REPORT FROM THE COMMISSION

**on the implementation in 2005-2006 of Directive 2002/15/EC on the organisation of the
working time of persons performing mobile road transport activities**

**(1st report from the Commission on the implementation of the working time rules
relating to road transport)**

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1. INTRODUCTION

This report deals with the implementation of Directive 2002/15/EC¹ on the organisation of working time of mobile workers in road transport in the Member States.

The Directive specifies the provisions for working time, breaks and night work. Its objectives are to improve road safety, prevent the distortion of competition and guarantee the safety and health of the mobile workers. This Directive thus complements the provisions of Regulation (EC) 561/2006 on driving times and rest periods that are of direct influence on road safety, and competition, as they specify the maximum driving time allowed.

Despite the provision of Article 13 of the Directive, which obliges Member States to submit their reports for the years 2005 and 2006 by 30 September 2007, the Commission had received only two national reports in due time. The Commission therefore launched infringement procedures for non-compliance with their respective obligations against a majority of the Member States. One of the reasons for this unsatisfactory situation was that many Member States had a significant delay concerning the notification of the transposition of the Directive itself into national legislation. Even though all Member States have now transposed the Directive, one has to note that only very few Member States had notified a complete transposition in due time.

All Member States, which submitted their reports, used the standard reporting format established by Commission Decision of 22 September 2008² on drawing up the standard reporting form. The reports were in most cases complete and uniform, but they lacked information on exact numbers of checks dedicated to Directive 2002/15/EC on the organisation of working time for mobile workers in road transport and on offences detected. This important information should be made available in order to be able to assess the effectiveness of national implementation measures.

Bulgaria and Romania, having become Member States of the European Union only as from 1 January 2007 and therefore after the end of the reporting period, did not have to submit national reports, which is the reason why they are not taken into account.

¹ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of working time of persons performing mobile road transport activities ,OJ L 80, 23.3.2002, p. 35

² Commission Decision of 22.IX.2008 drawing up the standard reporting form referred to in Article 17 of Regulation (EC) No 561/2006, (C(2008)5123 final)

2. DIRECTIVE 2002/15/EC

2.1. General Information

Directive 2002/15/EC on the organisation of working time of mobile workers in road transport is complementing Regulation (EC) No. 561/2006 on driving times and rest periods, which regulates the majority of the working activity of professional drivers, namely the driving of goods and passenger vehicles. This Regulation applies to all professional drivers engaged in the transport of goods or passengers, regardless of their nature. With the digital tachograph, that records driving times, rest periods, periods of other work and availability accurately, having become compulsory for all vehicles registered after 1 May 2006, the enforcement of the social rules has substantially improved. The Directive is a *lex specialis* to Directive 2003/88/EC³ concerning certain aspects of the organisation of working time (hereinafter: the Basic Working Time Directive) and it covers other aspects of working time in road transport, apart from driving time and rest periods. Similarly, as the Basic Working Time Directive, it applies only to workers, but not to self-employed. However, a provision foresees that under certain conditions the scope of this sectoral working time Directive shall be extended from 23 March 2009 onwards also to self-employed drivers.

Directive 2002/15/EC on the organisation of working time of mobile workers in road transport defines among others the terms of "working time", "periods of availability" and "night work". It furthermore sets a maximum weekly working time and minimum breaks.

The average weekly working time should not exceed 48 hours, but the maximum weekly working time may be extended to 60 hours by the competent bodies, if over four months an average of 48 hours per week is not exceeded.

Member States shall ensure that mobile workers do not have to work for more than six consecutive hours without a break. Breaks shall be at least of 30 or 45 minutes, depending on the total duration of daily working hours and may be subdivided into periods of at least 15 minutes each.

If night work is being performed, the daily working time should not exceed ten hours within each 24 hours period and compensation for night work should be foreseen in a way that does not endanger road safety.

Member States may derogate from these provisions on condition that social partners were consulted. These derogations should not lead to a reference period of calculation of the average maximum weekly working time of 48 hours, which exceeds six months.

Member States shall ensure that information is being given to mobile workers concerning the Directive and make sure that the working time of mobile workers in road transport is being recorded properly. For cases of non-compliance they should introduce a system of penalties.

Finally, in order to enable the Commission to fulfil its obligation to issue a report every two years on the implementation of the Directive, the Member States have to submit national reports no later than 30 September following the date on which the two-year period covered

³ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299 , 18.11.2003 p. 9

by the report expires. The two-year period ought to be the same one as that referred to in Regulation (EC) No 561/2006.

2.2. Transposition in the Member States

One of the biggest problems concerning the application of Directive 2002/15/EC on the organisation of working time of mobile workers in road transport was its late transposition into national legislation by most Member States. It has to be borne in mind that the non-compliance of Member States with their obligation to transpose the Directive into national law in due time has led to a delay of the harmonisation of the social rules in the EU. This potentially harms the achievement of the objectives of the Directive.

By the time of expiry of the transposition period (23 March 2005) only very few Member States had notified a complete transposition. Belgium, the Czech Republic, Denmark, Ireland, Greece, Spain, France, Italy, Latvia, Luxembourg, Netherlands, Austria, Portugal and Sweden only notified transposition after the launch of an infringement procedure by the Commission. The other Member States notified their transposition legislation with delay.

3. COMMENTS AND CONCLUSIONS

3.1. Data Submission

By 30 September 2007, when all national contributions should have been submitted to the Commission according to Article 13 of the Directive, only Finland and the United Kingdom had submitted their reports. Cyprus, Sweden and Spain delivered their reports with a delay after a reminder, while the Commission had to launch infringement procedures against all the remaining Member States.

It is obvious, that the failure of most Member States to comply with their obligations to send a national report to the Commission is owed to the fact that some of them only notified the implementation of the Directive at the end of or even after the expiry of the current reporting period. As has been stated earlier, almost no Member State managed to transpose the Directive into national legislation by 23 March 2005, as prescribed by its Article 14.

3.2. Checks and Offences

Only Slovakia and Hungary indicated the exact numbers of checks and of offences detected in relation with the Directive and working time.

In Hungary the report showed that the number of offences as well as the number of drivers involved decreased between 2005 and 2006. It remains to be seen whether this is a long term effect or not and to what extent Directive 2002/15/EC on the organisation of working time for mobile workers in road transport had an influence.

In Slovakia, the number of shortcomings detected increased by more than 25% between 2005 and 2006.

Only Greece (Annual report by the Labour Inspection Corps), Latvia (Commercial operator inspection report with recommendations to the operator), Slovenia (Setup of a recording system and a record of measures being taken in administrative and administrative offence procedures) and the United Kingdom (Interviews with mobile workers and operators as well

as with stakeholders on the effects of the Directive) reported to have introduced a system to monitor the effectiveness of enforcement.

For future reports it would be important to get information on these data in order to be able to assess the effectiveness of legal and administrative measures taken by the Member States to implement the Directive.

3.3. Decisions by the Court of Justice and national Courts

The ECJ did not pass any judgement relating to Directive 2002/15/EC on the organisation of working time for mobile workers in road transport during the reporting period.

As far as national cases are concerned, only Sweden (9 cases submitted to the public prosecutor), the Slovak Republic (several administrative procedures) and Slovenia (several administrative procedures leading to fines against undertakings for not keeping records of working time) reported their cases. The final outcomes of these proceedings were not reported.

3.4. Comments

This is the first report covering Directive 2002/15/EC on the organisation of working time of mobile workers in road transport. All Member States submitted their reports according to the format as specified by Commission Decision of 22 September 2008⁴ on drawing up the standard reporting form. That means that the Member States described the following points:

- how the report has been produced and which stakeholders were consulted,
- the implementation of Directive 2002/15/EC
- the monitoring of the implementation
- outlook to the future.

There were only two points, to which scarce data were submitted:

- the judicial interpretation, on which only Sweden, Spain, Slovakia and Slovenia reported;
- the assessment of effectiveness, which was only indicated by Greece, Latvia, Slovenia and the United Kingdom in their reports.

Due to the fact that the transposition period ended on 23 March 2005 and that most Member States did not transpose the Directive at the beginning of the reporting period, it is not surprising that the number of proceedings concerning the Directive is limited both in front of national courts and the European Court of Justice.

As far as the assessment of the effectiveness of the Directive is concerned, Member States need to increase the quality of their reporting, as this is one of the points explicitly demanded by the reporting format. Member States should provide more information on the practical implementation of the Directive. They should describe also how their implementing measures will help a better achievement of the main objectives of the Directive.

In most cases, Member States made no specific reference on the way checks were carried out. Due to the structure of tachograph-recordings, roadside checks only deliver limited information regarding night work and maximum weekly working time.

⁴ Commission Decision of 22.IX 2008 drawing up the standard reporting form referred to in Article 17 of Regulation (EC) No 561/2006, C(2008)5123 final

3.5. Conclusions

This is the first report on the implementation of Directive 2002/15/EC. Having received the reports from the Member States, it is difficult to assess whether the Directive had an effect on the respect of social rules in road transport. This is partly caused by the low compliance by Member States with their obligation to transpose the Directive into national law within the prescribed timeframe, and to communicate this legislation to the Commission .

Efforts by the Member States are needed to improve the assessment of the effectiveness of the measures taken by the Member States to implement the Directive.

It also seems to be of potential benefit for Member States to increase their cooperation in exchange of information on best enforcement practices.

All of the reports should have included information concerning opinions of the two sides of the industry on the implementation of Directive 2002/15/EC as requested by the Directive.

Most Member States did not comment on the level of compliance with the provisions of the Directive and transposing national legislation by drivers and employers. However, from the information received, the Commission assumes that the provisions of the Directive are not thoroughly respected.

A few Member States commented on the question of the scope of the Directive and the inclusion of self-employed drivers.